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CLIENT/MATTER NUMBER
 135421-0104

August 5, 2024

VIA ECF

The Honorable Katherine Polk Failla
 Thurgood Marshall
 United States Courthouse
 40 Foley Square
 New York, NY 10007

MEMO ENDORSED

Re: *Sariant, Inc. and Sariant Health, LLC v. Penstock Consulting, LLC*, Case No. 1:23-cv-07872-KPF

Letter Motion for Requesting Issuance of a Letter of Request to Take the Deposition of Mexican Nationals, Ben Ayala and Uriel (Ulises) Cota Huerta

Dear Judge Failla:

Our firm represents Plaintiffs Sariant, Inc. and Sariant Health, LLC (“Sariant”) in the above-referenced action. We write on behalf of Sariant to request the issuance of letters of request pursuant to Rule 28(b) of the Federal Rules of Civil Procedure and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters so as to permit the taking of the depositions of Ben Ayala and Uriel (Ulises) Cota Huerta, both of whom are Mexican nationals.

Messrs. Ayala and Huerta are former employees of Defendant Penstock or independent contractors. They were part of the select few employees or contractors working for Penstock on the project to develop Sariant’s proprietary software during the time period relevant to Sariant’s lawsuit. Upon information and belief, Messrs. Ayala and Huerta have personal knowledge of the following actions by Penstock:

- Performing work to develop Sariant’s proprietary software;
- Accessing Sariant email accounts without authorization;
- Making or retaining copies of Sariant’s proprietary software;
- Accessing, deleting, or modifying working notes and code documentation related to Sariant’s proprietary software;
- Modifying, controlling, or removing Sariant’s access to its cloud computing platform;
- Invoicing for work performed on behalf of Sariant;
- Modifying the archiving protocol for versions of Sariant’s proprietary software; and
- Altering or disabling of Sariant’s cybersecurity agents.

In Penstock’s initial disclosures, Penstock identifies Messrs. Ayala and Cota Huerta as individuals with personal knowledge. Mr. Ayala is not currently represented by any counsel to this

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matter. We have inquired directly to Penstock's counsel as to whether Mr. Cota Huerta is represented by them but have yet to receive confirmation. Whether or not Penstock's counsel also represents Mr. Cota Huerta, he is known by all parties to have information that is centrally important to this lawsuit.

Accordingly, Sadian respectfully requests the Court issue the **attached Letters of Request** to permit Sadian to take the depositions in Mexico of Ben Ayala and Uriel (Ulises) Cota Huerta.

The undersigned will coordinate with Penstock's counsel to determine whether an agreement can be reached to have Messrs. Ayala and Cota Huerta appear voluntarily for their depositions and the format for said depositions. If no agreement can be reached, Sadian respectfully requests that the Court provide the parties an opportunity to confer on written questions to be provided to the Mexican judicial authority accompanying the letters of request.

Thank you for your consideration in this matter.

Respectfully submitted,

FOLEY & LARDNER LLP

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*Attorneys for Plaintiffs
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cc:

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Enclosure:
 Proposed Letters of Request

Application GRANTED. The Court will issue Plaintiffs' proposed Letters of Request under separate cover.

The Clerk of Court is directed to terminate the pending motion at docket entry 44.

Dated: August 9, 2024
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE